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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,812	01/15/2004	Brandon P. Grote	3356-155	5409
24256	7590	09/12/2005	EXAMINER	
DINSMORE & SHOHL, LLP 1900 CHEMED CENTER 255 EAST FIFTH STREET CINCINNATI, OH 45202			WEST, PAUL M	
			ART UNIT	PAPER NUMBER
			2856	

DATE MAILED: 09/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/757,812	Applicant(s) GROTE ET AL.	
	Examiner Paul M. West	Art Unit 2856	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-16, 18-20 and 25-37 is/are rejected.
- 7) ☒ Claim(s) 9, 17 and 21-24 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>07052005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 13 June, 2005, with respect to claims 1, 10, 29, and 37 have been fully considered but they are not persuasive. With respect to claims 1, 10, 29 and 37 Applicant argues that Murphy et al. do not teach the first end portion of the float guide member 108 being engaged prior to the attaching of the mounting device, however, Murphy et al. teach the the first end portion of the float guide member 108 being inserted into and held within the tank opening prior to attaching the mounting device 106. This is interpreted as the the first end portion of the float guide member being engaged with the tank opening.
2. Applicant's arguments, see the third full paragraph on page 3, lines 4-7, filed 13 June 2005, with respect to claims 9, 17, and 21-24 have been fully considered and are persuasive. The rejection of claims 9, 17, and 21-24 has been withdrawn.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-8, 10-16, 18-20, and 25-36 are rejected under 35 U.S.C. 102(e) as being anticipated by Murphy et al.

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

As to claims 1 and 10, Murphy et al. teach a tank assembly comprising: a tank 202 with a tank opening 208 and a tank interior in communication with the tank opening; a float guide member 152,154 comprising a first end portion engaging the tank opening and a second end portion positioned within the tank interior; and an apparatus for measuring a fluid level in a tank, the apparatus comprising: a housing 102 including a level indicator 184 adapted to display a measured fluid level; a float 112; an elongated flexible member 114 with a first end attached to the float 112; a spool 176 adapted to store a portion of the elongated flexible member, the second end of the elongated flexible member being attached to the spool; a biasing member adapted to urge the spool to automatically uptake portions of the elongated flexible member as the float travels towards the housing and adapted to allow the elongated flexible member to unwind from the spool as the float travels away from the housing (Col. 6, lines 62-67; Col. 7, lines 1-5); and a mounting device 106 attached to the housing and including an interior passageway, wherein a length of the elongated flexible member is adapted to

Art Unit: 2856

extend through the interior passageway, and wherein the mounting device is adapted to attach to a tank opening after a separate float guide member 152,154 is engaged with the tank opening.

As to claims 2, 3, 11, and 12, the mounting device 106 is adapted to trap a first end portion of the float guide member between a portion of the mounting device and a tank opening, and the mounting device 106 includes an interior shoulder.

As to claims 4 and 14, a mounting device 104,106 includes a threaded portion and an interior shoulder, wherein the threaded portion engages a tank opening and the interior shoulder 148 engages a first end portion of float guide member 152,154.

As to claims 5 and 13, the mounting device engages a first end portion of the float guide member and a tank opening while the first end portion of the float guide member engages a tank opening.

As to claims 6, 7, 15, and 19, a mounting device 106 includes a threaded portion disposed adjacent a second end of the mounting device and an interior shoulder disposed between the threaded portion and a first end of the mounting device, wherein the mounting device is rotatably attached to a housing 102,104.

As to claims 8, 16, 20, and 25, the level indicator 184 includes a first level indicating gear 188, a second level indicating gear 189 and a first indexing device 194 adapted to facilitate an incremental rotation of the second level indicating gear based on rotation of the first level indicating gear, wherein the first indexing device is adapted to interact with a first corresponding level indicating gear 188 and the second level indicating gear 189 (the indexing device 194 fits between gears 188 and 189) to

Art Unit: 2856

substantially prevent movement of the first indexing device 194 away from the first corresponding level indicating gear 188.

As to claim 18, the float guide member 152,154 is telescoping (Col. 5, lines 30-32) and therefore the portion 152 is an elongated tube.

As to claims 26, 27, and 28, the level indicator 184 further comprises a third level indicating gear 190, and a second indexing device 195 adapted to facilitate an incremental rotation of the third level indicating gear based on rotation of the second level indicating gear, wherein the second indexing device is adapted to interact with a second corresponding level indicating gear 189 and the third level indicating gear 190 (the indexing device 195 fits between gears 189 and 190) to substantially prevent movement of the second indexing device 195 away from the second corresponding level indicating gear 189.

As to claim 29, Murphy et al. teach a method of installing an apparatus as described above for measuring a fluid level and a float guide member to a tank, the method comprising: inserting a second end portion of the float guide member 152,154 through the tank opening and into the tank interior until a first end portion of the float guide member engages the tank opening; associating the float 112 with the float guide member 152,154; and attaching a mounting device 106 to the tank opening after the first end portion of the float guide member is engaged with the tank opening.

As to claims 30 and 31, the mounting device 104,106 traps a first end portion of the float guide member between a portion of the mounting device and a tank opening, and the mounting device 106 includes an interior shoulder.

As to claim 32, the mounting device engages a first end portion of the float guide member and a tank opening while the first end portion of the float guide member engages a tank opening.

As to claim 33, the mounting device 104,106 includes a threaded portion and an interior shoulder 148, and attaching the apparatus to the tank includes threading the mounting device to the tank opening such that the interior shoulder 148 of the mounting device traps the first end portion of the float guide member 152,154 between a portion of the mounting device and the tank opening.

As to claim 34, Murphy et al. teach calibrating the apparatus (Col. 3, line 31).

As to claims 35 and 36, the float guide member 152,154 is telescoping and is modified by shortening or lengthening before inserting through the tank opening.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Murphy et al. in view of Masuda (JP2004340635).

6. As to claim 37, Murphy et al. teach all of the limitations as set forth above but do not teach the float guide member comprising an elongated tube with an interior passage wherein the float guide member is inserted into the interior passage of the tube.

Art Unit: 2856

Masuda teaches a method of in which a float 21 is inserted into the interior passage a float guide member 10 that comprises an elongated tube. It would have been obvious to one of ordinary skill in the art to use the tubular passage float guide member or Masuda with the apparatus and method of Murphy because a tubular passage allows the float to be constructed as one solid piece without a hole and therefore much easier to manufacture.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Allowable Subject Matter

8. Claims 9, 17, and 21-24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul M. West whose telephone number is (571) 272-8590. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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